

NOTICE OF CLASS ACTION CERTIFICATION and
APPROVAL OF PARTIAL SETTLEMENT

Fortress Syndicated Mortgages Class Action in respect of:
The Orchard, Calgary

You are receiving this notice because you invested in a “Fortress” syndicated mortgage loan in respect of the following Development Project:

- the **Orchard Project**, located at 602, 606, 610, 620, 624, 626 and 628 12th Avenue S.E., in Calgary, Alberta in respect of the charge registered as Registration Number 141 112 373;

A Class action has been commenced in respect of this Development Project:

- *Arlene McDowell and The Estate of Bryan Madryga by his Estate Administrator Rebecca Shaw v. Fortress Real Capital Inc. and others CV-17-570361-00CP (Orchard)*

(the “Class Action”)

This notice provides you with important information about the Class Action that you need to be aware of because there are **two important developments** that can impact your legal rights.

1. The Class Action has been Certified for Settlement Purposes as against the FMP Defendants

The Court has certified the action involving the Orchard Development Project as against the Defendant FMP Investments Inc., Michael Daramola, Tonino Amendola and Graham McWaters (the “FMP Defendants”).

The FMP Defendants are referred to as the “Settling Defendants”.

The Class Action has not been certified as against any of the remaining Defendants who have not already settled (the “Non-Settling Defendants”). A further notice will be sent to you if the Class Action is certified against the Non-Settling Defendants.

2. The Court has Approved a Settlement with the FMP Defendant

The Ontario Superior Court of Justice has approved a settlement with the FMP Defendants that will fully and finally resolve the Class Members' claims against the FMP Defendants. The **FMP Defendants will pay \$3 million** inclusive of all interest, court costs, administrative costs, and legal fees in exchange for a full and final release from the Class Members.

In this Settlement, the Settlement Funds are being paid by the Settling Defendants' insurer. The Court has determined that the Settlement is fair, reasonable and in the best interests of the Class.

No settlement has been reached with the Non-Settling Defendants. If any future settlement is achieved, you will receive another notice to tell you about that.

What Do I Need to Know?

Please read the following **Part I** and **Part II** to understand how the certification and settlement approval impact your legal rights.

You do not have to pay any legal fees out of your own pocket to participate in the Class Action. Class Counsel are paid on a contingency fee basis from the Settlement Funds, as explained below. You are also not at risk to pay any court costs. Only the Representative Plaintiffs are liable for any adverse court costs, and Class Counsel has provided them with an indemnity.

The opt out period for this class proceeding has already expired following an earlier settlement with the BDMC and FFM Defendants. You are a member of the Class because you did not opt out at that time.

As a Class Member, you are entitled to receive your proportionate share of the Settlement Funds after deduction of settlement administration costs and the court-approved legal fees and disbursements.

For more information, including details about the Class Action or the Settlement, visit www.fortressclassaction.ca or contact Class Counsel at:

Sotos LLP 55 University Ave., Suite 600 Toronto, ON M5J 2H7 info@sotos.ca Tel: 1-888-977-9806 (toll free)	MSTW Professional Corporation 36 Toronto Street, Suite 1120 Toronto, ON M5C 2C5 mwine@mstwlaw.com Tel: 416-477-5524 Fax: 416-777-2050
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Your Rights and Options are explained in this Notice.

Please Read the Following Pages

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Part I: Certification of the Action Against FMP

BASIC INFORMATION

1. What is a Class Action?

A class action is a unique type of lawsuit. It allows many people to sue someone who hurt or injured them in a similar way. For example, in this case the investors in each of the syndicated mortgage loans in this Development Project are called the “Class” and each individual investor is a “Class Member”.

Because the number of people in a class can be large, one or more class members act as “representative plaintiffs”. These class members chose to bring the action on behalf of everyone who was affected by the defendant. Here, the Representative Plaintiffs are pursuing this Class Action for the benefit of everyone who invested in a syndicated mortgage loan relating to the Orchard Development Project. The lawyers for the Representative Plaintiffs and the Class are called “Class Counsel”.

In a class action, the court decides the issues about what happened and the legal questions that are common to the whole class. These are called “Common Issues”, and when they are decided at trial, they are decided for everyone in the class.

2. What is the lawsuit about?

The Representative Plaintiffs in this Class Action are seeking to recover the losses they and the Class Members suffered because of their investments in the Fortress syndicated mortgage loan secured on the Orchard Development Project. The claims do not relate to investors’ losses from their investments in any other syndicated mortgage loans on any other developments.

The Defendants in the Class Action include Fortress Real Capital Inc., Fortress Real Developments Inc., Jawad Rathore, Vincenzo Petrozza, Lamb Calgary Inc., Orchard Calgary Inc., Building & Development Mortgages Canada Inc. (formerly Centro Mortgage Inc.), The Estate of Ildina Galati by its Trustee in Bankruptcy Crowe Soberman Inc., FFM Capital Inc., Rosalia Spadafora, Derek Sorrenti, and Sorrenti Law Professional Corporation, as well as the Settling Defendants. Settlements have already been reached with Building & Development Mortgages Canada Inc. (formerly Centro Mortgage Inc.), The Estate of Ildina Galati by its Trustee in Bankruptcy Crowe Soberman Inc., FFM Capital Inc., and Rosalia Spadafora.

3. What are the allegations?

The Class Action alleges that the Class Members suffered investment losses because of the misconduct of the Defendants.

The Class Action raises several different causes of action against the Defendants. The legal terms for these allegations are: violations of statutory duties as per the *Financial*

Services of Ontario Act, breach of fiduciary duties, fraudulent and negligent misrepresentations, negligence, conspiracy to injure, and breach of contract.

If you would like to read more, copies of the Statements of Claim can be viewed under the documents tab at: www.fortressclassaction.ca.

4. How do the Defendants respond to these allegations?

The Defendants who have defended the Action all deny wrongdoing. The Defendants, Fortress Real Capital Inc., Fortress Real Developments Inc., Jawad Rathore, Vincenzo Petrozza did not defend the Action and have been noted in default. The Defendants, Lamb Calgary Inc. and Orchard Calgary Inc. were not served with the claim as they were single-purpose entities with no assets.

None of the allegations made against the Settling Defendants have been proven in court, and the Settling Defendants deny all the allegations that have been made against them. If a settlement had not been reached, the Settling Defendants would be defending the Class Action and opposing the certification of this action as a class proceeding. The settlement is a compromise of the parties' positions and is not an admission of liability or fault by the Settling Defendants.

5. Has the Court decided who is right?

No decision has been made about whether the Class or the Defendants are right. This will not happen unless the matter goes to trial against the Non-Settling Defendants.

While the Settling Defendants have negotiated a Settlement, the Court has not, and will not, decide if the Settling Defendants are at fault.

CERTIFICATION INFORMATION

6. Why did I get this Notice?

You received this Notice because, according to the records of FAAN, you invested in the syndicated mortgage loan that is the subject of this Class Action, and you are, therefore, a Class Member.

The Notice lets you know that the Plaintiffs have reached a Settlement with the Settling Defendants.

As part of the Settlement, the Settling Defendants have consented to the action being certified as a class proceeding against them.

This Notice tells you that the Class Action has been certified, and the Court has approved the Settlement. As part of the Settlement, the Class Members will be providing a full and final release to the Settling Defendants. They will also be limiting their claims against the

Non-Settling Defendants to the Non-Settling Defendants' proportionate share of liability as determined at trial.

7. What is "Certification" and why is it necessary?

In order for the Court to decide if the Settlement Agreement is fair, reasonable, and in the best interests of Class Members, the Court must first decide if the Action is suitable to be prosecuted as a class action. It must appoint the representative plaintiff(s) to allow the representative(s) to pursue the action on behalf of the Class, and it must decide who the Class Members are. The Court does this through a process called "certification". Without certification, the lawsuit could not be prosecuted for the benefit of the Class, and each investor would have to make claims for their losses individually.

8. Who is a Class Member?

The Class Members in the Class Action are:

All persons in Canada who invested in a syndicated mortgage in respect of the Orchard Project, registered against title to lands located at 602, 606, 610, 620, 624, 626 and 628 12th Avenue S.E., in Calgary, Alberta as Registration Number 141 112 373.

9. What are the Common Issues?

The common issues certified as against the FMP Defendants are:

- i. Did FMP breach its contracts with the Class members? If so, how?
- ii. Did FMP owe a fiduciary duty to the Class members, and if so, in what respect? If yes, did FMP breach its fiduciary duty owed to the Class members, and if so, how?
- iii. Did the Settling Parties owe a duty of care to the Class members with respect to the claims asserted against it in negligence or negligent misrepresentation?
- iv. If the Settling Parties owed a duty of care to the Class members with respect to the claims in negligence or negligent misrepresentation, what was the applicable standard of care for this Settling Parties?
- v. If the Settling Parties owed a duty of care to the Class members with respect to the claim in negligence or negligent misrepresentation, did the Settling Parties breach the applicable standard of care? If so, how?
- vi. Did FMP make fraudulent misrepresentations to the Class members, and, if so, is FMP liable to the Class with respect thereto?

- vii. Did FMP conspire with any one or more of Fortress Real Capital Inc., Fortress Real Developments Inc., Jawad Rathore, Vincenzo Petrozza, Building & Development Mortgages Canada Inc., or others, with the intent to cause harm to the Class members? If so, did the conspiracy cause harm to the Class members?
- viii. Can the Class members' damages be assessed, in whole or in part, in the aggregate, and if so, what is the quantum of their aggregate damages?

10. Are there risks involved in being a Class Member?

Class Members are not responsible for any court costs that might be payable to the Non-Settling Defendants. Only the Representative Plaintiffs are at risk for any adverse cost awards, and they are being indemnified by Class Counsel.

Class Members do not have to pay any legal fees out of their own pockets. Class Counsel are working on a contingency fee basis, which means that they are only paid if the Class Action is successful, either through settlements or a trial judgment. Class Counsel's fees are paid from the settlement fund or trial judgment, and must first be approved by the Court.

Class Members cannot sue the Defendants on their own, and they are bound by the Court's decisions in the Class Action - whether or not they are favourable to the Class.

11. What if I don't want to be involved in the Class Action (Opt Out)?

As the Class Action has already been certified in respect of the BDMC and FFM settlements, and you received payments in respect of those settlements, you cannot now opt out of the Action.

12. What happens now?

FAAN Mortgage Administration Inc. will distribute the net Settlement Funds to the Class Members in accordance with a distribution plan approved by the Court as part of the Settlement Approval. The net Settlement Funds is that amount of the Settlement Funds that remains after deduction of the court-approved Class Counsel legal fees and disbursements, the costs of delivering the Notices, and the Settlement administration costs.

As a Class Member, you will be legally bound by all Court orders and judgments, including a release to be granted in favour of the Settling Defendants. You will not be able to sue the Defendant on your own with respect to your syndicated mortgage loan investment losses.

Part II: Approval of the Settlements with FMP

13. What are the terms of the Settlement Agreement?

The Court has approved a settlement with the FMP Defendants that will fully and finally resolve the Class Members' claims against the FMP Defendants. The FMP Defendants' insurer will pay \$3 million inclusive of all interest, court costs, administrative costs, and legal fees in exchange for a full and final release from the Class Members.

In exchange for payment of the Settlement Funds, all of the Class Members' claims against the Settling Defendants will be released on a full and final basis. The ongoing claims against the Non-Settling Defendants will be limited to the Non-Settling Defendants' proportionate share of fault, if any, for the Class Members' losses.

14. Who are the "Settling Defendants"?

There are many defendants in this Class Action. The Settling Defendants are FMP Mortgage Investment Inc., a mortgage brokerage firm, Tonino Amendola, Michael Daramola and Graham McWaters (also referred to as the FMP Defendants).

15. What does a Partial Settlement mean?

The Court has approved the Settlement with the Settling Defendants. But that will not end the lawsuit. The Class Action will be continued as against each of the Non-Settling Defendants. This will include bringing a motion for certification of the Class Actions as against each of the Non-Settling Defendants, and eventually holding a trial on the common issues, assuming that certification is granted, or obtaining a default judgment against the Defendants who have been noted in default. It is possible that there may be future settlements, and if there are you will be notified. You will also be notified about the outcome of any common issues trial.

16. How do I get paid from the Settlement?

The Court has determined that the Settlement Agreement is fair, reasonable, and in the best interests of Class Members in the Class Action.

The Court has also approved a distribution plan for the payment of the net Settlement Funds to the Class Members. Because the Class Members are all known from the records of FAAN, FAAN will distribute the settlement funds directly to the Class Members in accordance with the distribution plan. There is no need to fill out any forms or to make any application to receive a payment.

THE LAWYERS REPRESENTING YOU

17. Do I have a lawyer?

Sotos LLP and MSTW Professional Corporation are the lawyers for the Representative Plaintiffs and are referred to as Class Counsel.

18. Do I have to pay anything?

You do not have to pay any of the fees and expenses of Class Counsel, directly. Class Counsel's fees and expenses have been approved by the Court in the total amount of \$859,321.63, inclusive of disbursements and taxes for the FMP Settlement. These amounts will be deducted from the Settlement Funds, along with FAAN's costs associated with providing the Notices and administering the Settlements. The Court has also ordered a holdback of \$169,500 for future expenses and legal fees. The balance will be paid out to the Class Members.

ADDITIONAL INFORMATION

19. What if I have more questions?

You can obtain additional information about this case by contacting Class Counsel using the information below:

Sotos LLP 55 University Ave., Suite 600 Toronto, ON M5J 2H7 info@sotos.ca Tel: 1-888-977-9806 (toll free)	MSTW Professional Corporation 36 Toronto Street, Suite 1120 Toronto, ON M5C 2C5 mwine@mstwlaw.com Tel: 416-477-5524 Fax: 416-777-2050
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This notice is a summary of the Settlement Approval order. If there is a conflict between this notice and the terms of the Settlement Approval order, the Settlement Approval order prevails. The Settlement Approval Order can be viewed in the documents tab at www.fortressclassaction.ca.

The Ontario Superior Court of Justice approved this notice, however, if you have questions or comments, contact Class Counsel and not the Court